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INTERSTATE COMMERCE COMMISSION
DEC 27 1988 12-40 PM
RECORDATION NO. 6103
FILED 1425

December 27, 1988

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

8-362A039

No.

Date DEC 27 1988

Fee \$

13.00

ICC Washington, D.C.

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and two counterparts of a Locomotive Lease Agreement, dated as of December 21, 1988, between General Electric Company ("Lessor") and Southern Pacific Transportation Company ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company
2901 East Lake Road
Erie, PA 16531

LESSEE: Southern Pacific Transportation
Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

A general description of the railroad locomotive covered by the enclosed document is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

DONELAN, CLEARY, WOOD & MASER, P. C.

Letter to Secretary McGee
Page Two
December 27, 1988

Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.


A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Locomotive Lease Agreement, dated as of December 21, 1988, between General Electric Company ("Lessor") and Southern Pacific Transportation Company ("Lessee"), relating to one (1) General Electric Dash 8-40B, 4000 horsepower, 4-axle road freight locomotive, bearing identification mark "GECX" and Road No. 8002.

Respectfully submitted,

BY:



John K. Maser III
Attorney-In-Fact

004/207-HD-#1
Enclosure
286-8

Schedule I

Description of Locomotives

<u>Type of Equipment</u>	<u>AAR Mechanical Designation</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric Dash 8-40B, 4000 horsepower, 4-axle road freight locomotive	B-B	1 locomotive	Marked "GECX" in red on both sides of locomotive	8002

Interstate Commerce Commission

Washington, D.C. 20423

12/27/88

OFFICE OF THE SECRETARY

John K Maser III Esq.

Donelan, Cleary, Wood & Maser. P.C.

1275 K St. N.W. Suite 850

Washington, D.C. 20005-4006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/27/88 at 12:40pm, and assigned recordation number(s). 16108

Sincerely yours,

Narita L. McEuen

Secretary

Enclosure(s)

DEC 27 1988 12-4 0 PM

LOCOMOTIVE LEASE AGREEMENTRECORDATION NO. 1 6108

This Lease is made as of the 21ST day of December, 1988, between General Electric Company, a corporation of the State of New York (hereinafter "Lessor") and Southern Pacific Transportation Corporation, a corporation of the State of Delaware, (hereinafter referred to as the "Lessee").

1.0 Equipment

Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use under the terms and conditions set forth herein, the locomotive described in Annex 1 hereto, and any substitute locomotive(s) as may be furnished from time to time under this Lease. For convenience the word "Locomotive", as used herein, shall include the locomotive described in Annex 1 and/or any substitute locomotive furnished hereunder.

2.0 Delivery

- 2.1 Delivery of the Locomotive shall be made at Lessor's facility in Erie, Pennsylvania, or at such other point as may be agreed upon by the parties in writing. If delivery is to be made at a point other than Lessor's facility in Erie, Lessee shall pay all freight expenses in connection with the shipment of the Locomotive to said point. The estimated date of delivery for the Locomotive described in Annex 1 is October 1988.
- 2.2 The Lessor shall not be liable for delays in delivery for failure to deliver the Locomotive due to (a) causes beyond its reasonable control, or (b) to acts of God, acts of the Lessee, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riots, or delays in transportation, or (c) inability due to causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

3.0 Receipt, Inspection and Acceptance

- 3.1 At the time the Locomotive is delivered, an authorized representative of Lessee shall execute a Certificate of Receipt in the form attached as Annex 2 hereto.
- 3.2 The Locomotive will be subject to Lessee's inspection upon delivery. Failure to report any material defect in the Locomotive within thirty (30) days after delivery will constitute acceptance of the Locomotive and be conclusive evidence of its fitness for service at the time of delivery.
- 3.3 The Locomotive will be available at all reasonable times for Lessor's inspection, but Lessor is under no obligation to

inspect and Lessee's obligations to keep the Locomotive in good repair and operating condition will not be affected in any manner by any failure to inspect.

4.0 Rentals

- 4.1 Lessee agrees to pay to Lessor, as rent for the Locomotive, the sum of \$565.00 per day during the term of this Lease.
- 4.2 Payment of all rental charges will be made quarterly in arrears, within ten days of the end of each calendar quarter. All other payments due under the lease will be made within thirty days of invoicing.
- 4.3 If the Locomotive is not available for revenue-producing service as a result of Lessor's failure to supply certain necessary materials within normal agreed-upon lead times, the daily rental shall abate after the expiration of the applicable period of time under (a) the necessary materials are delivered to the Lessee or (b) a substitute locomotive has been placed in the service of Lessee by Lessor.
 - 4.3.1 It is understood and agreed that locomotives furnished as substitute locomotives hereunder shall be of a type mutually agreed upon by the parties. Locomotives furnished hereunder substitute as locomotives, shall, at the time delivered to Lessee, be in good repair and operating condition and meet all applicable federal regulatory requirements. All substitute locomotives, once delivered and until their return to Lessor, shall be subject to the provisions of this Lease.
- 4.4 The parties also have agreed, in an agreement entitled Major Component Warranty And Reliability Guarantee pertaining to certain performance guarantees, on the amount of credit(s) that may be applied from time to time against any rentals due hereunder.
- 4.5 Anything to the contrary notwithstanding, it is agreed that if any amounts remain unpaid, after the same shall have become due and payable pursuant to the terms of this Lease, the Lessee shall pay interest at the rate of 8% per annum (or the lawful rate, whichever is less) on the overdue rentals for the period of time during which they are overdue, it being expressly understood that this provision shall be in addition to (and not in derogation of) any other rights which Lessor may have under this Lease in the event Lessee fails to make all payments when due and payable.

5.0 Alterations, Maintenance and Repair

- 5.1 Except for alterations or changes required by law or regulatory authorities, or as otherwise expressly permitted by Lessor hereunder, the Lessee shall not effect any change in the design, construction or specifications of the Locomotive, body or electrical equipment, or components thereof, without the prior authority and approval of the Lessor. Any such alteration or change if made shall be at Lessee's expense. Any parts installed or replacements made by Lessee upon any Locomotive shall be considered accessions to such Locomotive and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.
- 5.2 Lessee shall, during the term of the lease, at its expense (except to the extent specified in 5.3 and 5.4 below) keep the Locomotive in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended normal maintenance standards and procedures. Lessee shall also assume all costs of operating expense including lubricating oils, grease and other supplies necessary for the proper operation of the Locomotive, including supplies furnished by Lessor. These supplies must be specified and approved in advance by Lessor. Lessee is responsible for repairing the Locomotive promptly when repairs are required, subject to availability of material to be supplied by Lessor.
- 5.3 Lessor shall provide the labor and materials, as described in Annex 4 hereto, for the following FRA and manufacturer-recommended inspections: 92 day, 184 day, 276 day, annual, 2nd annual, 3rd annual and 4th annual.
- 5.4 Lessor's Warranty
- 5.4.1 Lessor warrants that the Locomotive leased hereunder shall be free from defects in material and workmanship under normal use and service during the term of the lease. If, during the term of the lease, any part of the Locomotive fails to meet the foregoing warranty and Lessee so informs Lessor upon that failure, Lessor, after verification of the condition of the part and usage, shall make available to Lessee a replacement or repaired part. Lessee shall continue to provide at its expense the labor to remove defective parts and install repaired and replacement parts.
- 5.4.2 If the Lessor is required to make available any replacement or repaired parts in accordance with this Paragraph 5.4, it is understood that this shall not in any way affect or abate Lessee's obligation to pay rent except as specifically provided in Section 4 hereof.

- 5.4.3 Notwithstanding the generality of 5.4.1 above, Lessor's responsibility shall not extend to any parts normally consumed in operation (such as but not limited to, filters and brake shoes), or defects or damage caused in whole or in part by failure to comply with its operating and maintenance recommendations, by reason of improper storage or application, by misuse, negligence, accident or improper maintenance, or by repairs or alterations not authorized or approved by Lessor.
- 5.4.4 This Paragraph 5.4 sets forth the exclusive remedies for claims based on defects in or failures of the Locomotive, whether claim is in contract, warranty, tort (including negligence) or otherwise and however instituted. Upon the expiration of the warranty period all such liability shall terminate. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.

6.0 Patents

- 6.1 Except in cases of designs, articles and materials specified by the Lessee and not manufactured by the Lessor, or manufactured by the Lessor to Lessee's design, the Lessor shall defend any suit or proceeding brought against the Lessee so far as based on a claim that any Locomotive or any part thereof, furnished under this Lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Lessor's expense) for the defense of same, and the Lessor shall pay all damages and costs awarded therein against the Lessee. In case said Locomotive, or any part thereof, in such suit is held to constitute infringement and the use of said Locomotive or part is enjoined, the Lessor shall, at its own expense, and at its option, either procure for the Lessee the right to continue using said Locomotive or part; or replace same with non-infringing items; or modify it so that it becomes non-infringing; or take possession of said Locomotive and cancel the Lease with respect to such Locomotive, effective as of the date on which the Locomotive or part is held to constitute infringement in such suit, the Lessor to pay the reasonable cost of returning said Locomotive to Lessor. The foregoing states the entire liability of the Lessor for patent infringement by said Locomotive, or any part thereof.
- 6.2 With respect to any designs, articles or materials specified by the Lessee, and not manufactured by the Lessor, or manufactured by the Lessor to Lessee's designs, the Lessee shall defend any suit or proceeding brought against the Lessor so far as based on a claim that any such designs, articles or

materials, or any part thereof, furnished under this Lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Lessee's expense) for the defense of same, and the Lessee shall pay all damages and costs awarded therein against the Lessor. In case said designs, articles or materials, or any part thereof, is held to constitute infringement, and the use thereof is enjoined, the Lessee shall, in respect of the Locomotive, at its own expense, procure for the Lessor the right to continue using or manufacturing said designs, articles and materials, or shall permit Lessor, at Lessee's expense, to modify such designs, articles and materials so as to become non-infringing.

- 6.3 It is understood that, notwithstanding any suits or proceedings which may be brought against Lessor or Lessee based on a claim that any Locomotive, or any part thereof, furnished under this Lease, constitutes an infringement of any patent of the United States, Lessee's obligation to pay rent with respect to such Unit, as provided in Section 4 hereof, shall continue for the term of this Lease, unless and until Lessor elects to cancel the Lease with respect to such Unit, as provided in Paragraph 6.1 above.

7.0 Use and Operation

- 7.1 The Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotive, to the extent that such laws and rules affect the operation or use of the Locomotive.
- 7.2 Lessee will use and operate the Locomotive in conformance with all applicable manufacturer recommendations.
- 7.3 Lessee will maintain records as to the use, operation, movement and maintenance of the Locomotive, and such records will be available for Lessor's inspection.
- 7.4 Lessee agrees to use the Locomotive exclusively within its own service and within the boundaries of the United States, except as specifically agreed to in writing by Lessor.

7.5 Charges levied by third parties for use of their rights of way, track, storage or hauling are the responsibility of the Lessee.

8.0 Taxes and Liens

8.1 The Lessee agrees that, during the continuance of this Lease, it will promptly pay, as additional rentals, all taxes, assessments and other governmental charges levied or assessed against the Lessor, or any predecessor or successor in title of the Lessor, as the case may be, on account of its ownership of the Locomotive, or on account of the use or operation thereof, or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the rentals herein provided), including any sales or similar taxes payable on account of the leasing of the Locomotive hereunder; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof, unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be materially endangered. In the event any tax reports are required to be made concerning said Locomotive, the Lessee will either make such reports in such manner as to show the ownership of such Locomotive by the Lessor or will notify the Lessor of such requirement and will make such report in such manner as shall be satisfactory to the Lessor.

8.2 The Lessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against the Lessee which, if unpaid, might become a lien or charge upon or against the title of the Lessor to the Locomotive or which might have the effect of altering in any way the rights of the Lessor in such Locomotive under this Lease; but the Lessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of the Lessor, materially endanger the rights or interests of the Lessor.

9.0 Loss and Damage

9.1 Lessee shall bear the entire risk of loss (including theft) or damage to any Locomotive from the date of delivery through return to the Lessor in the condition specified in this Lease, regardless of the cause of such loss or damage.

9.2 Lessee shall notify Lessor immediately of any accident, collision, loss, theft or damage involving the locomotive, to be followed promptly by a detailed written report to Lessor.

Lessee shall provide all assistance reasonably requested by Lessor in the investigation of, defense or prosecution of any resulting claims or suits.

- 9.3 In the event a locomotive is lost or damaged beyond repair, Lessee shall so notify Lessor. Within thirty days of such notification, Lessee shall pay to the Lessor the daily rental charges through the date of notification and the casualty value of the Locomotive as of the date of notification, such casualty value to be determined in accordance with the table attached to this Lease as Annex 3. Upon payment of the foregoing amounts, title to the Locomotive shall vest with Lessee and this Lease will terminate. The provisions of Section 16 shall not apply upon such termination.
- 9.4 In the event the locomotive is partly damaged or destroyed, the Lessee shall promptly elect whether to repair the locomotive or consider it damaged beyond repair. If the Lessee elects to repair the locomotive, it shall do so (or have the repairs done) at its own expense. It is understood that the locomotive so repaired must be restored to good operating condition, reasonable wear and tear excepted. Moreover, during the period such repairs are being made, Lessee's obligation to pay rent shall continue.
- 9.5 Lessee shall, at all times, at its own expense, cause to be carried and maintained (and shall furnish to Lessor, upon request therefor, a certificate evidencing) with respect to liabilities assumed by Lessee under this Lease (i) all risk insurance on locomotive and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts (subject to customary and prudent deductibles) and against such risks and with such insurance companies as is consistent with prudent railroad industry practices; provided, however, that, if Lessee customarily self-insures against such risks, Lessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices. Any policies of insurance carried in accordance with the provisions of the lease will name Lessor as an additional insured, provide that they will not be cancelled or materially altered without thirty days prior written notice to the Lessor, and will contain such other appropriate provisions as are agreed upon by the parties.

10. Indemnity

The Lessee hereby agrees to indemnify, reimburse, and hold the Lessor, and any assignee or successor in title of Lessor, harmless from any and all losses, damages, costs (including attorney's fees), injuries, claims, demands, suits, judgments or causes of action

whatsoever (hereinafter referred to as the "Liabilities") arising on account of, or caused in any way by, the Locomotive or the use or operation thereof, except to the extent directly caused by the negligence of Lessor, or a defect in the Lessor's manufacture or design of the Locomotive (provided, however, that the forgoing exception shall not apply to defects in designs, articles or materials specified by Lessee). Lessee will notify Lessor immediately of any liability, as defined above, and permit Lessor to appear in any proceeding to defend its interests as they may be.

11. Liability of Lessor

- 11.1 Lessor's liability arising out of the furnishing of any Locomotive under this lease (or any subsequent sale), or its use, whether the liability is based on contract, warranty, tort (including negligence) or otherwise, will in no case exceed the cost of correcting defects to the Locomotive.
- 11.2 In no case, whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, will Lessor's liability include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages.

12. Title, Identification, Recording

- 12.1 At all times during the continuance of this Lease, title to the Locomotive shall remain in Lessor and delivery of the Locomotive to Lessee, its assigns or successors and Lessee's possession of the Locomotive shall constitute a lending or bailment for hire.
- 12.2 No right, title or interest in the Locomotive will vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Locomotive, except the right to use the Locomotive in accordance with the terms of this Lease.
- 12.3 Lessee will take all actions necessary to protect Lessor's rights, interest and title in the Locomotive, and will take no action inconsistent with that obligation.
- 12.4 Prior to delivery of the Locomotive by Lessor to Lessee, the Lessor shall cause to be plainly, distinctly and conspicuously marked on each side of the Locomotive, at Lessor's expense, the following legend:

GENERAL ELECTRIC COMPANY
OWNER, LESSOR
LEASE FILED WITH ICC

Lessee shall not permit such legend to be removed or altered and in the event such words are removed, defaced or destroyed, Lessee shall immediately replace or cause such legend to be

replaced at its expense. Lessee will not allow the name of any persons, association or corporation to be placed on the Locomotive as a designation that might be interpreted as a claim of ownership; but the Locomotive may be lettered with the names or initials or other insignia customarily used by the Lessee on its equipment of the same or a similar type for convenience of identification of the rights to use and operate the Locomotives under this Lease.

12.5 Prior to delivery of any Locomotive hereunder, Lessee, at its own expense and without expense to Lessor, shall cause this Lease and any supplements hereto and any assignment and reassignment hereof to be filed with the Interstate Commerce Commission. Lessee shall deliver to Lessor one copy of certificates or other evidence satisfactory to counsel for Lessor of such filing and of the payment of filing of fees and taxes, if any, in connection therewith. In addition, Lessee shall do such other acts as may be required by Federal or state law, or reasonably requested by Lessor, for the proper protection of Lessor's title and interest in the Locomotive.

13. Assignment

13.1 Lessee shall not assign, transfer or encumber this Lease or any interest therein or any right granted hereunder without the prior written consent of Lessor, and it is agreed that any such transfer, assignment or encumbrance, whether voluntary, by operation of law, or otherwise, without such prior written consent, shall be void and shall, at the option of Lessor, terminate this Lease.

13.2 Lessor, upon prior written notice to Lessee, may assign this Lease and all or any of the rights, benefits and advantages hereunder (including, but not limited to, title to any Locomotive) to any of Lessor's subsidiaries (of any tier) or affiliates as Lessor may select in its sole discretion.

14. Representations and Warranties

14.1 The Lessor represents and warrants that it will be the true and lawful owner of any Locomotive delivered to the Lessee in accordance with the provisions of this Lease and that any such Locomotive will be free and clear of all liens and encumbrances of any nature whatsoever, it being understood that this provision shall not restrict the right to Lessor to assign title to any such Locomotive, as provided in Section 13. The locomotive will meet all FRA Standards in effect at time of manufacture.

14.2 The Lessee represents and warrants that:

14.2.1 The Lessee is a duly organized and validly existing corporation in good standing under the laws of the State

of Delaware; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease; and has power and authority to own its properties and carry on its business as now conducted;

- 14.2.2 The execution and delivery of this Lease is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter, by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Lease is a valid and binding obligation of the Lessee enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against the Lessee in accordance with its terms;
- 14.2.3 The rights of Lessor as herein set forth and the title of Lessor to the Locomotive are senior to the lien of any mortgage, security agreement or other instrument binding upon Lessee;
- 14.2.4 No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Lease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained;
- 14.2.5 No litigation or administrative proceedings are pending or to the knowledge of the Lessee, threatened against the Lessee, the adverse determination of which would affect the validity of this Lease or the rights of the Lessor hereunder.

15. Opinions of Counsel

- 15.1 Promptly after the recording of this Lease as provided for in Section 12 hereof and before delivery of any Locomotive hereunder, the Lessee will deliver to the Lessor an opinion of the General Counsel or a General Attorney for Lessee, in five copies and in form and substance satisfactory to counsel for Lessor, to the effect that (i) the Lessee is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease; and has the power and authority to own its properties and carry on its business as now conducted; (ii) this Lease had been duly authorized, executed and delivered by the Lessee and does not contravene any provision of law or of its charter or by-laws nor contravene or constitute a

default under the provisions of any agreement or other instrument binding upon Lessee; this Lease has been filed and recorded in such public office as may be necessary of the full protection of the rights of the Lessor and assignees of the Lessor; and this Lease is valid, binding and legally enforceable against the Lessee in accordance with its terms, subject to any applicable insolvency, bankruptcy or moratorium laws; and (iii) the rights of Lessor as herein set forth and the title of Lessor to the Locomotive furnished under this Lease are and will be senior to the lien of any mortgage, security agreement, or other instrument binding upon Lessee; (iv) no governmental authorizations, approvals or exemptions (including, without limitation, approvals of the Interstate Commerce Commission, of public service commissions, or other regulatory authorities in states in which Lessee operates) are required for the execution and delivery of this Lease or for the validity or enforceability thereof or for the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions herein provided, or if any such authorizations, approvals or exemptions are required, that they have been obtained; and (v) no litigation or administrative proceedings are pending or to the knowledge of the Lessee, threatened against the Lessee, the adverse determination of which would affect the validity of this Lease or the rights of the Lessor hereunder.

- 15.2 Concurrently with the delivery of the Lessee's Certificate of Receipt pursuant to Section 3 hereof, the Lessee will deliver to the Lessor an opinion of counsel for Lessee, in five copies and in form and substance satisfactory to counsel for Lessor, to the effect that appropriate action has been taken hereunder so that the Locomotive referred to in the related Certificate of Receipt is held by the Lessee subject to the terms and conditions of this Lease, including the payment of the rentals provided for herein to the Lessor or assignee of Lessor, as the case may be.

16. Return of Locomotives

- 16.1 Upon the expiration of the term of this Lease pursuant to Section 18 hereof, or upon the earlier termination of this Lease pursuant to the provisions of Sections 8 or 17 hereof, the Lessee shall forthwith deliver to the Lessor, or to such person or persons whom Lessor may designate, possession of the Locomotive in the same good repair and operating condition with unencumbered title as initially delivered by Lessor, ordinary wear and tear excepted. If Lessee returns the Locomotive in other than the condition described above, Lessor may, at Lessee's cost and expense, repair the Locomotive to return it to such condition and invoice Lessee for the cost of such repair, which invoice shall be payable immediately by Lessor as additional rent.

For the purpose of delivering possession of any Locomotive to the Lessor as above required, the Lessee shall, at its own cost and expense, forthwith return and redeliver such Locomotive to the Lessor at such point on the tracks owned or controlled by Lessee as Lessor may designate. In addition, Lessee shall, if requested to do so by Lessor, at its own expense, (a) forthwith place such Locomotive upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may elect, (b) permit the Lessor to store such Locomotive on such tracks for a period not exceeding 60 days at the risk of the Lessor, and (c) transport the same, at any time within such 60-day period, on a one-time basis, to any place on the lines of railroad owned or controlled by it or to any connecting carrier of shipment, all as directed by the Lessor. The delivery, storage and transporting of the Locomotive, as hereinbefore provided, are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to deliver, store and transport the Locomotives.

- 16.2 Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Locomotive to the Lessor, to demand and take possession of such Locomotive in the name and on behalf of the Lessee from whomever shall be at the time in possession of such Locomotive.

17. Default

- 17.1 If Lessee breaches or is in default of any material provision of this Lease and such breach or default is not cured within fourteen (14) calendar days after written notice specifying such breach or default has been given pursuant to the provisions of this Lease, then Lessor, at its option, may, without prejudice to any other rights or remedies it may have under this Lease, at law or inequity, do any one or more of the following:

- 17.1.1 proceed by appropriate court action or actions either at law or inequity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;
- 17.1.2 terminate this Lease immediately, whereupon Lessee shall return and deliver possession of the Locomotive to Lessor in accordance with Section 16 hereof, and the Lessor may by its agents enter upon the premises

of the Lessee or other premises where any Locomotive may be and take possession of all or any such Locomotive and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Locomotive for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due and owing or which may become due and unpaid for the use of the Locomotive (including, but not limited to, rentals accruing on the Locomotive after the date of termination; and also to recover forthwith from Lessee (to the extent not recovered pursuant to the foregoing) amounts due pursuant to subparagraph 17.1.3 below;

17.1.3 subsequent to termination and the return and delivery of possession of the Locomotive to Lessor, deliver the Locomotive to others upon such terms as Lessor may see fit in its sole discretion, it being understood and agreed that if Lessor, during the period of time running from the date of termination through the normal expiration of this Lease as provided in Paragraph 18.1 or the date of sale of the Locomotive, whichever first occurs, fails to collect for the use of the Locomotive a sum at least equal to the amount of rentals that would have been paid during that period pursuant to Section 4 without abatement or credit, plus an amount equal to the expenses of withdrawing the Locomotive from the service of Lessee, then Lessee shall pay from time to time upon demand by Lessor the amount of any such deficiency.

17.2 The remedies and powers in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Lessor. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any remedy or power, no granting of an extension of time for the making of any payment due hereunder or other indulgence and no exercise of any remedy or power shall impair any such remedy or power or the rights under this Lease or shall constitute a waiver of any breach or default or an acquiescence therein. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

17.3 As used in this Section, a breach or default of a material provision of this Lease shall include, but not be limited to, the following:

17.3.1 failure to pay any amounts hereunder when due;

17.3.2 Lessee's making or suffering, voluntarily, by operation of law or otherwise, any unauthorized assignment, encumbrance or transfer of this Lease or any interest thereon or any right granted thereunder, and shall fail or refuse to cause such assignment, encumbrance or transfer to be cancelled by agreement of all parties having any interest therein.

17.3.3 any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions.

18. Term

18.1 The term of this Lease shall commence upon delivery of the Locomotive described in Annex 1 and shall continue until the expiration of five (5) years following such delivery, unless sooner terminated for default or event of loss as described in Sections 17 and 9 respectively.

18.2 Upon termination, Lessee, at its expense, shall return the Locomotive to Lessor as provided in Section 16, except as specifically provided in Sections 9 and 19.

18.3 It is understood and agreed that any termination will not relieve either party of any obligation arising prior to or upon such termination, including but not limited to the obligations of Lessee under Section 10 and 12, and any obligation to pay any rent or other sums due and owing to Lessor at the time of any such termination or as a result of any such termination.

19. Option of Purchase of Locomotive

19.1 Upon the expiration of the five year term of this Lease, Lessee may, at its option, purchase the Locomotive upon mutually agreeable terms and conditions. Such terms and conditions will be generally comparable to the terms and conditions of sale then prevailing between the parties, taking into account the age, use and condition of the Locomotive. This option may be exercised by Lessee by giving notice of its intention to Lessor no later than one hundred eighty (180) days prior to the aforementioned date of expiration of this Lease.

- 19.2 The purchase price of the Locomotive, if the option to purchase is exercised, shall be determined by an appraisal of the fair market value of the Locomotive. The appraisal shall be conducted by an appraiser agreed upon by the parties or, if no agreement can be reached, by two appraisers, one selected by each party. In the case where two appraisers are used, the fair market value shall be determined by the average of the appraisals.
- 19.3 The Locomotive shall be provided to the appraiser(s) for appraisal in the same good repair and operating condition as if said Locomotive were being returned pursuant to Section 16. Such appraisal(s) shall be conducted no later than thirty (30) days prior to the expiration of the five (5) year term of this Lease.
- 19.4 It is understood that the appraisal of fair market value does not include sales, use, excise or similar taxes. Consequently, in addition to the price, the amount of any federal or state sales, use, excise or other similar taxes applicable to the sale or use of the Locomotive shall be paid by Lessee, or in lieu thereof, Lessee shall provide Lessor with a Tax Exemption Certificate acceptable to the tax authorities.
- 19.5 Upon receipt of payment by Lessor for the Locomotive from Lessee, or from such other party as may be designated by Lessee, title to such Locomotive shall pass to Lessee, or to such other party as may be designated by Lessee, at such place or places as such Locomotive may then be, and this Lease shall thereupon terminate and extinguish any obligation of Lessee to return the Locomotive. Lessor shall deliver to Lessee or such third party appropriate Bills of Sale evidencing such passage of title, and such other documents as may reasonably be requested in connection with the sale and/or termination of this Lease.

20. General

20.1 Subject Headings

The subject headings on this Lease have been placed thereon for the mere convenience of the parties and shall not be considered in any question of interpretation or construction of this Lease.

20.2 Waiver

The failure of either party to enforce at any time or for any period of time any provision of this Lease shall not be construed as a waiver of such provision or of the rights of such party thereafter to enforce such provision.

20.3 Notice

All notices required or permitted hereunder shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by cable confirmed by letter as aforesaid, as follows:

To Lessee:

To Lessor:

or to such other address as either party may hereafter designate in writing by like notice.

20.4 Execution in Counterparts

This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

20.5 Applicable Law

Except insofar as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, but Lessor and any assignee thereof shall be entitled to such additional rights arising out of the filing or recording hereof, or of any assignment hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any such assignment shall be filed or recorded.

20.6 Entire Agreement

Except as otherwise specified herein, this Lease contains the entire and only agreement between the parties concerning the subject matter hereof, and there are merged herein all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promise or condition not incorporated herein and made a part hereof shall not be binding upon either party. No modification, renewal, extension, termination or waiver of this Lease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party.

WHEREFORE, the parties hereto, intending to be legally bound hereby, have executed this Lease as of the date first written above.

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

BY KC Moore

TITLE Vice President-Transportation

DATE 12/21/88

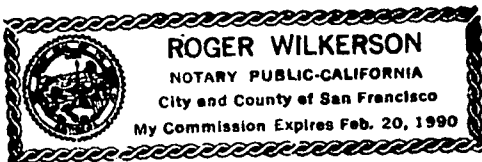
GENERAL ELECTRIC
COMPANY

BY W. J. Butler
GENERAL MANAGER - TRANSPORTATION
SYSTEMS MARKETING AND SALES
DEPARTMENT

DATE 12/20/88

STATE OF CALIFORNIA)
 : SS.:
COUNTY OF San Francisco)

On this 21st day of December, 1988, before me personally appeared K. A. Moore, to me personally known, who, being by me duly sworn, says that he is the Vice President Transportation of Southern Pacific Transportation Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Roger Wilkerson
Notary Public

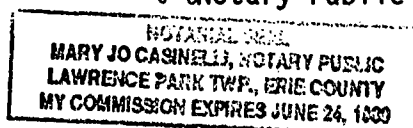
(Notarial Seal)

My Commission expires

STATE OF PENNSYLVANIA)
 : SS.:
COUNTY OF ERIE)

On this 20th day of December, 1988, before me personally appeared W. S. Butler, to me personally known, who, being by me duly sworn, says that he is the General Manager-Transportation Systems Marketing and Sales Department of General Electric Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Jo Casinelli
Notary Public



Member, Pennsylvania Association of Notaries

(Notarial Seal)

My Commission expires

- Annex 1 - Locomotive Description
- Annex 2 - Certificate of Receipt
- Annex 3 - Casualty Loss Table
- Annex 4 - Labor and Material for Inspections

ANNEX 1

THE LOCOMOTIVE WILL BE GECX ROAD NUMBER 8002

PAINTED IN GE COLORS

MANUFACTURED PER SPECIFICATION 41A313788 REV 4

CERTIFICATE OF RECEIPT

I, a duly appointed and authorized representative of ST. LOUIS SOUTHWESTERN RAILWAY COMPANY (the "Railroad") do hereby certify that I have inspected, received, approved and accepted delivery of the following Units of Equipment:

TYPE OF EQUIPMENT: B40-8 Diesel Electric Locomotive

PLACE ACCEPTED: Erie, Pennsylvania

DATE ACCEPTED _____

NUMBER OF UNITS: One (1)

MARKED AND NUMBERED: GECX

Road Number 8002

I do further certify that the foregoing Units of Equipment are in good order and condition, and conform to the specifications, requirements and standards referred to in Article 3 of the Locomotive Lease Agreement dated as of _____, 1988 ("LLA") between General Electric Company and _____ and St. Louis Southwestern Railway Company ("Railroad").

The Railroad has no knowledge of any defect in the Equipment with respect to design, manufacture, condition or in any other respect. Each unit has been inspected and accepted by the Railroad and marked in accordance with Article 12 of the LLA to wit: each unit has been labeled by means of a plate or a stencil printed in contrasting color upon each side of the unit in letters not less than one inch in height as follows:

General Electric Company
Owner, Lessor
Lease Filed with ICC

Dated: _____, 1988

Inspector and Authorized
Representative of the Railroad

ANNEX 3
SCHEDULE OF CASUALTY VALUES

<u>PAYMENT IN CALENDAR QUARTER ENDING</u>	<u>CASUALTY VALUE AMOUNT</u>
12/31/88	1,074,000
3/31/89	1,057,224
6/30/89	1,040,448
9/30/89	1,023,672
12/31/89	1,006,896
3/31/90	990,121
6/30/90	973,345
9/30/90	956,569
12/31/90	939,793
3/31/91	923,017
6/30/91	906,241
9/30/91	889,465
12/31/91	872,689
3/31/92	855,914
6/30/92	839,138
9/30/92	822,362
12/31/92	805,586
3/31/93	788,810
6/30/93	772,034
9/30/93	755,258
12/31/93	738,482

ANNEX 4

MATERIAL

CATALOG NUMBER	DESCRIPTION	QTY	INSPECTION
41C625459P1	AUX COMPARTMENT FILTER	2	92
2X4223	LUBE OIL FILTER	10	92
132X1570	FUEL FILTER	1	92
41A216205P1	AIR COMPRESSOR FILTER	2	92
41A218313P1	BAGGIE FILTERS	4	92
41B535453P6	TRACTION MOTOR BRUSHES	48	184
149X1011-1	FUEL PUMP BRUSHES	2	184
8828400P1	GRID BLOWER MOTOR BRUSHES	8	184
41A239329P2	ALTERNATOR BRUSHES	10	184
8867977P1	AFC & XFC CONTACTOR TIPS	4	184
123X1110R	FUEL INJECTOR NOZZLES	16	368
115X2446-1	FUEL FILTER "O" RING	1	368
499A914ADP6	18" WIPER BLADES	4	368
499A914ADP3	14" WIPER BLADES	2	368
41B547886P1	LUBE OIL FILTER "O" RING	1	368
41A218525P1	WATER TANK CAP	1	368
2X4460	CAB HEATER MOTOR BRUSHES	4	368
2X9910	818 AUX FILTER ELEMENT	1	368
2X7462	SEAL FOR 818 AUX FILTER	1	368
569146-	DL FILTER ELEMENTS	2	368
569146-	BRAKE PIPE LINE FILTER ELEMENT	1	368
1X6385	SEAL FOR 824 MAIN RES FILTER	1	368
3X1343	824 MAIN RES FILTER	1	368
41C636068P1	TRACTION MOTOR WICKS	8	368
41A239110P1	TRACTION MOTOR WICK GASKETS	8	368
41C625012P1	WATER INSPECTION COVER GASKET	2	368
132X1535R	HIGH PRESSURE FUEL PUMPS	16	736
499A477P4	FUEL HEATER HOSE	1	736
41A211183P2	MR DRAIN VALVE	2	736
1X1671	GASKET FOR MR DRAIN VALVE	2	736
41B511480P8	818 AUX FILTER W/VALVES	1	736
41A242203P5	824 MR FILTER W/VALVES	1	736
115X2137	"O" RING FOR #8 VENT VALVE	2	1104
41A212076P1	CHECK VALVE BETWEEN MAIN RES	1	1104
2X9215	ELEMENT FOR AMOT VALVE	1	1104
3X1763	GASKET KIT FOR AMOT VALVE	1	1104
562614-	GASKET FOR A1 PILOT VALVE	1	1104
562872-	GASKET FOR P2A APPL VALVE	1	1104
41A210740P1R	A1 PILOT VALVE	1	1104
41B590464P2R	P2A APPLICATION VALVE	1	1104
564072-	AIR COMPRESSOR RELIEF VALVE	1	1104
41C617411P1R	#8 VENT VALVES	2	1104
97368-	J1.6-16 VALVE GASKET	1	1104
554061-	J1.6-16 VALVE GASKET	1	1104
499A924BEP10R	J1.6-16 VALVE	1	1104
41A211154P2R	EMERGENCY BRAKE VALVE	2	1104

MATERIAL

CATALOG NUMBER	DESCRIPTION	QTY	INSPECTION
41A212869P6R	COMPRESSOR MAGNET VALVE	1	1104
1X4548R	DOUBLE CHECK VALVE	5	1104
1X7347R	SINGLE CHECK VALVE	1	1104
41A212869P5	OVERSPEED & SCMV MAGNET VALVE	2	1104
499A9244CCP13R	COMPRESSOR SAFETY VALVE 175#	1	1104
499A924CCP8R	COMPRESSOR SAFETY VALVE 150#	1	1104
41A212361P6R	SAND MAGNET VALVE	4	1104
557237-	GASKET FOR SA-26 VALVE	1	1104
564316R	SA-26 VALVE W/OFFSET HANDLE	1	1104
562073R	26C BRAKE VALVE	1	1104
557395-	GASKET FOR 26C BRAKE VALVE	1	1104
557173-	GASKET FOR 26F QUICK RELEASE	1	1104
557924-	GASKET FOR 26F SERVICE	1	1104
558414R	26F VALVE- QUICK RELEASE	1	1104
567141R	26F VALVE-SERVICE	1	1104

LABOR MAN HOURS

92 DAY INSPECTION	60 HOURS
184 DAY INSPECTION	66 HOURS
276 DAY INSPECTION	60 HOURS
ANNUAL	72 HOURS
2ND ANNUAL	112 HOURS
3RD ANNUAL	88 HOURS
4TH ANNUAL	112 HOURS

MATERIAL FOR 276 DAY INSPECTION IS THE SAME AS FOR THE 92 DAY INSPECTION.

MATERIAL FOR 4 TH ANNUAL INSPECTION IS THE SAME AS THE 2ND ANNUAL INSPECTION

MATERIAL FOR 2 ND ANNUAL INSPECTION IS NOT REQUIRED AT THE 3RD ANNUAL INSPECTION

A FLAT RATE OF \$30.00/HOUR FOR LABOR HOURS SHOWN ABOVE WILL BE PAID FOR EACH SPECIFIC INSPECTION PERIOD.

LESSEE SHALL FURNISH NECESSARY LABOR TO PERFORM THE ABOVE INSPECTIONS IF REQUESTED TO DO SO BY LESSOR. ALL LABOR SO FURNISHED SHALL, FOR THE DURATION OF THE LEASE, BE FURNISHED AT A FLAT RATE OF \$30.00/HOUR. ANY LABOR REQUIRED FOR A PARTICULAR INSPECTION IN EXCESS OF THE NUMBER OF HOURS SHOWN ABOVE FOR SUCH INSPECTION SHALL BE TO THE LESSEE'S ACCOUNT